

## PROCUREMENT APPEALS BOARD

### RULES OF PROCEDURE

#### 1. PURPOSE

The purpose of these Rules of Procedure (Rules) is to provide for the orderly disposition of the business of the Procurement Appeals Board by codifying the means by which business is to be transacted. In some respects, these Rules clarify language in "The 1991 Procurement Code of the Metropolitan Government" (Code) and in others, the Rules specify the procedure in situations not covered by the Code. The purpose of these Rules to the fullest extent possible, is to provide for the expeditious resolution of controversies.

#### 2. AUTHORITY

These Rules are adopted pursuant to the authority vested to the Board by Section 9-301 of The 1991 Procurement Code of the Metropolitan Government and Executive Order 92-06 issued by Mayor Philip Bredesen on the 14th day of December 1992.

#### 3. MEETINGS

Meetings of the Board shall be regularly scheduled on the third Wednesday of each month, unless otherwise changed by the Board. Said meetings shall be held in the Meeting Room, Second Floor, East Wing, Howard Office Building, and shall begin promptly at 9:00 a.m. Special sessions of the Board may be convened upon call by the Chair.

All meetings of the Board shall be open to the public pursuant to the TCA Section 8-44-101, et seq.

4. QUORUM - NUMBER OF VOTES REQUIRED FOR CERTAIN ACTIONS

The presence of three (3) members of the Board shall be necessary to constitute a quorum for the conduct of business. The concurring vote of a majority of those present shall be necessary to approve or modify any order, requirement, or decision of the Purchasing Agent, or to decide in favor of either the Purchasing Agent or the Appellant on any matter upon which the Board is required to pass or affect any modification.

5. ORDER OF BUSINESS

The order of business to be conducted at every meeting of this Board shall be as follows:

- (a) Call to Order
- (b) Roll Call
- (c) Approval of Minutes
- (d) Appeal Cases Presented
- (e) Executive Session (Decision on Appeal cases)
- (f) Old Business
- (g) New Business
- (h) Adjournment

6. MEMBERS OF THE BOARD AND OFFICERS

In accordance with the Code, the members of the Board and the Chair shall be appointed by the Metropolitan Mayor, and shall serve at the Mayor's discretion.

The Board may annually elect a Chair protem to serve in the absence of the Chair. Such election shall be held at the first meeting of the Board each calendar year.

7. SECRETARY

The Metropolitan Purchasing Agent of the Department of Finance, Division of Purchases, shall be an ex-officio member of the Board and shall serve as Secretary to the Board.

8. CONFLICT OF INTEREST

Any member of the Board who has a direct or indirect interest in any case which is the subject matter of or affected by a decision of the Board shall be disqualified from participating in the discussion, decision, and/or proceedings of the Board in connection therewith.

Each member of the Board shall conduct his/herself in accordance with the "Standards of Ethical Conduct", Metropolitan Code Section 2.72.010, et seq. Those standards are incorporated by reference. Any Board member who may have an interest in the issues in a given case shall publicly state the fact on the record so that parties to the case or member of the Board might object to his/her future participation in the case.

9. APPEAL CASES - PROCEDURE

Any person aggrieved by an order, decision or determination of the Purchasing Agent or his duly authorized representative, shall have the right to file an appeal requesting a hearing before this Board. Said appeal must be in writing and on forms provided by the Purchasing Agent and must set forth the grounds for protesting the determination or decision of the Purchasing Agent. The written appeal must be filed with the Purchasing Agent within seven (7) days after the date the Purchasing Agent's decision was served upon the appellant.

Each application will be assigned a number by the Secretary of the Board and be placed on a docket for hearing in chronological order unless the Board orders otherwise pursuant to the Code, or these Rules.

The Secretary shall notify the appellant in writing of the date, time, and place of the hearing. Copies of all notices will be sent to the appellant by Certified Mail - Return Receipt Requested. Copies of all notices shall also be forwarded to the Metropolitan Director of Law, as well as to the Department head of the affected Metropolitan Government Department, Agency, Board, or Commission. Copies of all notices shall also be forwarded to all other interested parties (bidders) who may have been affected by the decision of the Purchasing Agent or who may be affected by a decision of the Board.

The appellant, or his representative, must be present. In any case where the applicant has failed to appear, the Board shall dismiss the application for lack of prosecution, but the appellant will be eligible to reapply after one dismissal.

Any applicant may withdraw his or her application without prejudice at any time prior to the hearing on the case. If a second application is withdrawn or the applicant fails to appear for the second time, the withdrawal or dismissal shall be with prejudice. The Board will act to deny the appellants request and the Secretary shall thereafter not accept for filing, the same or similar application by the appellant (or party related to the appellant).

The Chair is authorized to place time limits on the presentation of testimony, statements, proof, and/or rebuttal in any and all appeal cases. Every person before the Board shall abide by the order and direction of the Chair. Discourtesy or disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the Board and shall be dealt with as the Chair deems proper.

All cases will be heard by the Board in accordance with these Rules. The order will be as follows:

- (a) The Decision of the Purchasing Agent
- (b) The Appeal
- (c) Testimony in Opposition to the Appellant
- (d) Rebuttal by the Appellant
- (e) Consideration by the Board, Discussions and Decision in Executive Session

Members of the Board may ask questions of anyone in attendance following any of the above testimonies. Upon completion of all hearings, the Board will consider all cases in Executive Session.

Decisions of the Board shall be prepared by the Secretary in written form, submitted to the Department of Law for approval as to form and content, then delivered to the Chair for his/her signature. The Secretary shall notify the appellant of the Board's decision by Certified Mail - Return Receipt Requested. Copies of all notices shall also be forwarded to all other interested parties (bidders), the Department of Law, the affected Metropolitan Government Department, Agency, Board, or Commission, and subsequently entered into the minutes of the Board.

#### 10. ABSENCE OF A RULE

When an issue arises which is not specifically covered by these Rules, the Board will be governed by Robert's Revised Rules of Order.

#### 11. POWERS & DUTIES

This Board shall have such powers and duties prescribed by the 1992 Procurement Code as may from time to time be amended, Executive Order #92-06, the Metropolitan Code of Laws, and the Metropolitan Charter.

#### 12. ADOPTED

The foregoing Rules of Procedure of the Procurement Appeals Board of the Metropolitan Government of Nashville and Davidson County are hereby adopted and shall become effective upon approval of the Metropolitan Mayor, and filing of these Rules with the Metropolitan Clerk.

AMENDMENT TO THE PROCUREMENT APPEALS BOARD RULES OF PROCEDURE

The following paragraph is added to Section 9. APPEALS CASES -- PROCEDURE of the rules adopted by the Board on September 15, 1993:

The Chair is authorized to continue (i.e., postpone or adjourn) a hearing if both parties mutually agree that a continuance is necessary, or if the appellant requests a continuance. An appellant may request only one continuance without mutual agreement of the Purchasing Agent. The Chair also may, at his or her discretion, continue a hearing at the request of the Purchasing Agent.

APPROVED AND ADOPTED ON THIS 17<sup>th</sup> DAY OF August 1994.

Stephen B. Gordon  
Secretary

PROCUREMENT APPEALS BOARD

Jim Co  
Chair

Caroline Starks  
Member

Michael Miller  
Member

Stephen W. Lytle  
Member

Anna S. Waller  
Member

APPROVED:  
Chin Red  
Mayor

